**Montana Law Review**

Volume 2
Issue 1 *Spring 1941*

Article 17

January 1941

# Uniform Criminal Law Administration

Justin Miller
*Associate Justice, United States Court of Appeals, Washington, D.C.*

Montana Law Review

SPRING 1941

# Uniform Criminal Law Administration

Justin Miller*

On the night after the Rose Bowl game, Coach Smitones, whose team was the victor, had a bad dream. He dreamed that his team was playing an obscure lot of country boys in a remote section of the mountains. The country boys kicked off; one of the Rose Bowl men signaled that he would receive the ball, but before he could do so he was tackled hard; the ball rolled away; it was recovered by one of the country boys who then ran unopposed to the goal line. When Coach Smitones protested the referee's decision that a touchdown had been made he was overruled and informed that they were not using exactly the same rules as those with which he was familiar. The teams lined up for another play, the opponents carrying the ball. Before the signals were called one of their ends broke away and ran nearly to the goal posts, whereupon the signals were called, the quarterback threw the ball into the waiting arms of the end, he stepped over the goal line and Coach Smitones protested futilely again, being informed by the referee that here again they had run into a difference in rules. The Rose Bowl boys then decided to take time out, whereupon the referee handed the ball to the quarterback of the opponent's team; he ran unopposed to the goal line and another touchdown was chalked up; under a rule previously theretofore unknown, namely, that if a team took out time during the first quarter it automatically gave a free run to the other team and an automatic touchdown. Coach Smitones was so distressed by this time that he ran out onto the field and protested to the officials against these arbitrary departures from the generally accepted rules, whereupon the referee awarded another penalty touchdown because of violation of a rule that if a coach runs out onto the field without permission

*Associate Justice, United States Court of Appeals, Washington, D. C. Member of the first graduating class of Montana State University Law School, 1913.

of the referee, the opposing team shall have an automatic touchdown. Needless to say, the country boys won the game.

Coach Smithone's nightmare, however, was no more horrendous to him than was the experience of Amicus Curiae, a lawyer from the Atlantic Seaboard who took a trip to California. He and his son started West on an air-conditioned train, met up with a pair of card sharks and soon entered into a happy game of poker. All went well and father and son were allowed to win easily during the early part of the journey, but as they traveled through Reno, Nevada, the card sharks decided that it was time to clean up. However, the young man had a sharp eye for card tricks and it was not long before he discovered that his opponents were playing with a deck containing five aces. As this was strictly against the rules, he challenged his opponents and, following an altercation, one of the latter rode the rest of the way to his destination in the baggage car. Upon arrival in San Francisco, Curiae, Jr., was placed under arrest, charged with murder. His father asked for, and received, permission to appear specially in the case as counsel. A preliminary examination was held and an information filed by the district attorney within a few days. Curiae, Sr., challenged the validity of the pleading on the theory that every man was entitled to be tried upon an indictment found by a grand jury. But the judge informed him that they used different rules in California than those with which he was familiar.[1] He then demanded that the information be quashed on the theory that the crime, if any, had occurred in Nevada. But the court informed him that under the rule of the California statutes it was permissible to prosecute if the deceased died in California;[2] as death occurred upon a train running through California and, as the destination of the train in this particular case was San Francisco, the offense might be shown to have been consummated in that county.[3] The trial proceeded and ere long a jury was selected consisting of seven women and six men. Curiae protested that he was entitled to a jury of male citizens. Blackstone had so stated, and it had been the rule of common law ever since. The court overruled the objection, saying that under the rule as it existed in California it was proper to have women on the jury,[4] as well as men. He

[1] CAL. CONST. ART. I, §8; CAL. PENAL CODE 1937, §§806, 809. *Cf.* MONT. CONST. Art. III, §8; R. C. M. 1935, §§11798, 11799, 11801, 11607, 11622, 11623.

[2] CAL. PENAL CODE 1937, §§778, 779. *Cf.* R. C. M. 1935, §11704.

[3] CAL. PENAL CODE 1937, §§778, 783. *Cf.* R. C. M. 1935, §§11704, 11709.

[4] CAL. CODE CIV. PROCED. 1937, §198; Ex parte Mana (1918) 178 Cal. 213, 172 P. 986; People v. Manuel (1919) 41 Cal. App. 153, 182 P. 306. *Cf.* R.

then objected on the theory that there were thirteen jurors in the box while a proper jury was twelve. The court informed him that this was a proper jury under the California law and that they would proceed to trial.[5] Thereupon he said that he would prefer to go to trial without a jury than to have *such* a jury, whereupon the judge said he would be glad to oblige, and upon waiver by the defendant and with the consent of the district attorney, the judge announced that they would proceed to try the case without a jury. Curiae chuckled to himself at this development, thinking that here he had sure and certain grounds for reversal, on the theory that a jury *could not be waived* by a defendant, or on behalf of a defendant, in a criminal trial. But what was his sorrow and amazement later, to find that the constitution of California had been amended to permit waiver of a jury and trial by the judge.[6] It is not necessary to carry this supposititious case any farther; except to say that Curiae, Sr. and Jr. were equally as surprised and equally chagrined, with the variance in rules, as had been Coach Smitones on the earlier occasion.

There is a moral to both of these stories and that moral is the vital need for uniform rules of criminal procedure and administration. In the days of the ox team and the high-wheeled cart, neither the condition of the roads, nor means of transportation, permitted expansion of community life much beyond the limits of the county. In those days it was easy to administer the law in terms of the community, without much regard to what was taking place in another county, to say nothing of another state. But in a day when football teams travel all over the United States; when poker playing may involve a question of state lines; and when the lawyers of today may be called upon to defend in states far removed from their own, it is time to think in terms of procedures universally understood and uniformly applied.

It is true, of course, that rules of procedure are of no importance in themselves alone. If they are well conceived, expertly drafted and *properly administered* they will be useful and effective. If not, they will throw the machinery of justice out of gear and set it clashing, one part against the other.

C. M. 1935, §8890, as amended by Ch. 203, §6, LAWS OF MONT. 1939.

[5] CAL. PENAL CODE 1937, §1089. *Cf.* R. C. M. 1935, §8927.1, as amended by Ch. 203, §4, LAWS OF MONT. 1939.

[6] CAL. CONST. Art. I, §7, as amended November 6, 1928; People v. Wilkerson (1929) 99 Cal. App. 123, 278 P. 466; People v. Spinato (1929) 100 Cal. App. 600, 280 P. 691. But *cf.* MONT. CONST. Art. III, §23; Chessman v. Hale (1905) 31 Mont. 577, 590, 79 P. 254, 258; Montana v. Ah Wah (1881) 4 Mont. 149, 1 P. 732.

As Chief Justice Taft once said. "You can have as high and sound principles of law as possible, but if you do not have the procedure by which you can apply them to the ordinary affairs of men, it does not make any difference what the principles are or how erroneous they may be.'" It is easy to understand the irritation of one of our distinguished circuit court of appeals judges, when he said recently in a dissenting opinion: "I cannot agree with my conscientious and able brethren that, complicated and archaically artificial as the rules and decisions have made federal procedure, they have so sanctified the form above the essence that in this case they compel us to deny to the United States the consideration of the merits of its appeal.'"[8]

It is true, also, that lack of uniformity of procedural rules does not constitute the whole problem. Equally important are considerations of personnel and administration, and of specialized training for judges, prosecutors, defense counsel, public defenders and others, as well as for investigators at the fact-finding level. As Judge Denman of the Ninth Circuit has pointed out,[9] we expend billions of dollars to maintain an army and a navy which shall be available in time of need, although that need may arise only once in a quarter of a century. What possible excuse can there be for continuing with undermanned courts and the undermanned personnel of courts, or with undermanned investigatory and prosecuting and defense staffs to take care of an *ever-present* emergency. It has been estimated that the cost of the federal judiciary is less than 1% of the total expended upon the three coordinate branches of the Federal Government. Surely it is not because of the expense of the system that we have been loathe to provide sufficient personnel and proper procedures adequately to take care of the problem.

The present absence of either uniformity or conformity in Federal criminal procedure is reflected in the large percentage of procedural questions now being considered by federal appellate courts. A study of two recent volumes of Federal Second, selected at random, produced the following striking results: In Volume 91 F. (2d), there were:

1. 20 cases involving criminal law;
2. 218 headnotes for the 20 cases;

[7] Quoted from the title page to 7 J. Am. Jud. Soc. No. 3 (October 1923).
[8] United States v. John II Estate (C. C. A. 9th, 1937) 91 F. (2d) 93, 95.
[9] William Denman, *The Denial of Civil Justice in the Federal Courts and a Suggested Remedy* (submitted March 9, 1936 to the Administration, the Attorney General, and Chairman of the Judiciary Committees of the Senate and House).

3. 127 headnotes on practice and procedure;
4. 48 headnotes on substantive law;
5. 42 headnotes on evidence;
6. 58% of the total, practice and procedure;
7. 77% of the total, practice, procedure and evidence;
8. 23% of the total, substantive law.

In Volume 100 F. (2d), there were:

1. 25 cases involving criminal law;
2. 204 headnotes for the 25 cases;
3. 111 headnotes on practice and procedure;
4. 53 headnotes on substantive law;
5. 40 headnotes on evidence;
6. 54% of the total, practice and procedure;
7. 74% of the total, practice, procedure and evidence;
8. 26% of the total, substantive law.

The need for uniform procedures and practice has been well demonstrated also in the situation which has existed during recent years in connection with the Atlanta Penitentiary. The custom has sprung up in Atlanta of challenging in the District Court, there, by petitions for writ of habeas corpus, the procedures leading up to commitment to that institution. The District Court of the United States sitting in Atlanta has become practically a clearing house for testing in literally hundreds of cases such procedures as they are carried out throughout the United States.

Within the states, in many places the present anti-crime army might be well compared to a great machine, so loosely set up that many of the wheels are running independently, many of them with gears partially stripped, wobbling on worn axles, occasionally meshing, in combinations of twos and threes, here and there; each wheel or small group of wheels powered from a separate source; some going at full speed ahead, some idling, some in reverse, some with brakes set. There is no master engineer or mechanic in charge of the whole; there is not even skilled professional supervision or operation of individual wheels in many cases, but instead crews of quarreling amateurs, who frequently displace each other, frequently change speed, frequently set their individual wheels in clashing conflict with others about them. Here and there is a bright wheel, on a true axle, well manned, running smoothly, trying desperately to mesh in with its neighbors. No one who is familiar with the processes involved in the administration of criminal justice can be unaware that the most vital phases of those processes are the ones least known and least discussed. In the field of civil procedure we have seen recently great strides in the development of rules for pretrial practices and for effect-

ing compromise adjustments. In the criminal law field approximately seventy-five per cent of the cases are being disposed of by pretrial procedures, which generally are extra-legal, unregulated, and even unknown by the public, except as individuals happen to be undercover participants.[10]

In spite of ever-increasing protests concerning the existing situation, advance in the development of criminal law administration has not progressed comparably with that in other fields; largely because the better-trained and higher-motivated lawyers have failed to contribute the necessary time and intellectual energy to the task.[11] Most of our people, numerically speaking, secure their education concerning criminal law administration from minor police officials, and their knowledge of criminal courts, judges and lawyers from their contact with inferior criminal courts. In view of such facts as these it should be apparent that continuing respect for law in this country depends upon a shift in present interests of lawyers, and a new emphasis upon the importance of an orderly, efficient and impartial administration of criminal justice. For example, it is the obligation of all lawyers and judges to see that the administration of justice in the superior courts is carried on with such expedition as is consistent with the proper adjudication of cases. There can be no possible excuse for long delays in disposing of issues between man and man or between man and his government. Those who have been long conditioned to a system which permits long delays have become calloused to an unpardonable *status quo*. And, on the other hand, it is necessary that the rights of poor, undefended people shall not be sacrificed to speed, in the unregulated procedures of the inferior courts.

It is only natural, of course, that lawyers, as well as other people, should be wary of procedural changes and reluctant to abandon the old landmarks. Justice Cardozo has said. "What has once been settled by a precedent will not be unsettled over night, for certainty and uniformity are gains not lightly to be sacrificed. Above all is this true when honest men have shaped their conduct on the faith of the pronouncement.'"[12] In a measure, the same holds true for rules of procedure. But it is significant that—in the application of Justice Cardozo's statement—while ordinarily precedent, certainty and uniformity go together, and while the process of the common law method of development is normally that of pro-

[10] *Compromise of Criminal Cases*, 1 So. Calif. L. Rev. 1 (1927).
[11] *Lawyers and the Administration of Criminal Justice*, 20 A. B. A. J. 77.
[12] Paradoxes of Legal Science (1928) pp. 29, 30.

ducing both certainty and uniformity; in the United States, on the contrary, because of our dual system of government and of legislative law-making, we have produced great uncertainty and lack of uniformity in criminal law administration. While, in the early days, when the control of crime was largely a local matter, it was sufficient that there should be certainty and uniformity within a particular county or state, in this day, when one can drive in an automobile across the United States in three or four days, or travel by plane across the United States over night, and when communication between states is as commonplace as was a trip from the farm to the county seat one hundred years ago, we carry an insufferable burden which has resulted from the terrible complexity, confusion, uncertainty and lack of uniformity in the criminal procedures of the state and federal governments.

The area of absence of uniformity is one in which the shyster lawyer operates; and in which lack of uniformity makes possible a wide variety of practices which no reputable member of the profession would condone. As was said by the Supreme Court in *Hyde* v. *United States*,[13] the result of complex and uncertain rules of criminal procedure is to give to the criminal "a kind of immunity from punishment because of the difficulty in convicting him." Moreover, lack of uniformity must be thought of, not only in terms of possible advantages to defense counsel, but also in terms of the opportunity which it gives to prosecuting counsel to take advantage of the rights of persons accused of crimes. The poor, ignorant man accused of crime may be subjected to all manner of pressures. And this is true not only because of the pressures which may be placed on him by the prosecuting or the investigatory branch, but also by reason of resulting pressures which come from a motley of underworld characters who are given that opportunity when the prestige and reputation of the accused individual have been shattered by the first impact of the administration of justice machine.[14] If we are vitally concerned in preserving the civil liberties of individuals, there is no better way to guarantee them than to establish rules of the game which will make it possible for the ordinary, honest, innocent, ignorant citizen to have some sense of assurance as to what his rights are and to where his remedies may lead him.

I would not be understood as urging rigid uniformity. In

[13](1912) 225 U. S. 347, 363, 56 L. Ed. 1114, 32 S. C. 793, Ann. Cas. 1914A, 614.

[14]*Difficulties of the Poor Man Accused of Crime*, 124 ANNALS AMER. SOC. P. & S. SCI. (March 1926) p. 63.

fact, the method used in establishing rules of procedure through the agency of the Supreme Court, and making amendment thereof a comparatively easy matter when the need appears, provides the ideal method of rule making, much less cumbersome than that involved in legislative law making, and much better calculated to bring to the task the best qualified minds throughout the country; as well as best calculated to provide a compromise result based upon understanding rather than upon the hasty give-and-take of the legislative process. For it is highly important that lawyers and judges who have had large experience in rule making and administration shall give thought and aid to the task, even though they have little or no interest in criminal law administration or contact with criminal practice. In the work of drafting rules of civil procedure there was almost universal interest. That is one good reason why the work was well done. It would be unfortunate, indeed, if the drafting of rules of criminal procedure should be left largely to those who practice criminal law. Much more is involved in securing a proper administration of justice than would result from a tussle between those who on the one side are solely concerned with "putting rats on the hot seat," and on the other side, those who may—like one criminal law shyster—see in efforts to improve criminal procedure merely an attempt to "take the shingles off his roof."

It may sincerely be urged that uniformity, like machine production, is not always desirable, that it is better to have a certain amount of freedom for experimentation in better ways of doing things, and that the proposal of uniformity in federal criminal procedure indicates merely a trend toward mass production, and an assembly-line method of criminal law administration. In view of the fact that the states will continue to be free to experiment as they please, this argument has not much weight. In fact, the parallel systems of federal and state criminal procedure will allow plenty of opportunity for experimentation in new methods and, moreover, for contrasting in each community the advantages of the two different methods.

It may be objected to the securing of uniformity in federal rules that the result will be to prejudice the local practitioner; that he will be forced to learn a new parallel system of procedure to be followed in a federal court as contrasted with that which he follows in the state court. The same objection was made to establishing uniform rules of civil procedure, and, of course, if the only consideration were one of convenience to the local practitioner the argument might be of substance. In view of the tremendous increase of crime and of

apparent inability to control it, we are driven to the use of every legitimate expedient that we can for the better protection of society. Obviously, if the state-federal system is to be made more effective one of the first steps to be taken is that of securing uniformity in procedure. Moreover, the same argument of local convenience would lead to opposition to the recently developed state and federal *investigatory* agencies on the theory that it is more advantageous to the man accused of crime and to his local counsel to have local police officials unequipped with modern facilities and without the advantage of the state and federal fingerprint files, for the discovery and apprehension of criminals. No honest lawyer can legitimately complain against any improved method of administration of criminal justice, merely because it may mean an increased load of work for him.

But it must not be supposed that no advance has been made in this field. A few striking examples will suggest a definite trend for the better. Commencing approximately twenty years ago with the Cleveland Crime Survey, a number of very important investigations have been made, both in large cities and in several of the states, as to the way in which justice is being administered, and the reports of these investigations contain material which is almost equally applicable in its interpretation to situations existing in local and state governments throughout the United States. Approximately fifteen years ago the American Law Institute began preparation of a code of criminal procedure, which has since that time been adopted in large part in some states and in lesser measure in others. Ten years ago the Wickersham Commission, appointed by President Hoover, made a comprehensive report on the administration of criminal justice in the United States, and indicated many directions in which improvement might be made. Most of the report received little attention because of the violent discussion which took place about the merits and demerits of its recommendations concerning national prohibition. As a consequence, much valuable material which is contained in this report has never been given the consideration which it deserves. On the other hand, a number of its recommendations have been carried out in some of the states, and in the federal government as well. Approximately five years ago Attorney General Homer Cummings, with the use of funds supplied by the Works Progress Administration, directed a nationwide survey of the subject of *Release Procedures.* A comprehensive report was published following this survey, which contains invaluable material for the use of state and local governments, in

securing a more uniform and adequate system of administration of criminal justice. Another highly important and successful project is that sponsored by the Interstate Commission on Crime, which, through the medium of interstate compacts under the compact clause of the constitution, and by means of a group of proposed uniform laws, has within the last three or four years secured a surprisingly large degree of cooperative interstate action.[15] Mention should be made also of a number of laws sponsored by the Conference of Commissioners on Uniform Laws.[16]

It is possible, of course, to secure an increasing measure of uniformity by expanding the range of federal criminal law administration, as has been done by laws defining as federal offenses, kidnaping, robbery of national banks, and others. This method has possibilities, but it has, also, definite limitations. The limitations, for the present at least, outweigh the possibilities. In no field is it more important that the power of local and state self-determination shall be safeguarded, than in the field of criminal law administration. Except for a few crimes, most criminal offenses are of such character that community understanding, and aggressive and intelligent community pressures are necessary for enforcement. However, within its proper sphere, much has been done to improve the administration of federal criminal justice. A number of individuals and organizations have been active in their efforts to secure this objective. Attorney General Homer Cummings,[17] Attorney General William D. Mitchell,[18] Attorney General Robert H. Jackson, have been particularly active toward this end. The American Bar Association, through its Section of Criminal Law, has rendered substantial aid over a period of years. The achievements of Attorney General Homer Cummings are of particular importance, both in securing legislation to round out the powers of the Department of Justice, and in the administrative guidance which he gave in implementing its work as it is carried on by the United States Attorneys and the various divisions and bureaus of the Department. Robert H. Jackson,

[15] HANDBOOK ON INTERSTATE CRIME CONTROL (1940).

[16] HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS (1939) pp. 308, 309. Record of passage by states of uniform and model acts sponsored by the American Bar Association as of July 1, 1939. The Appendix also compiles other information regarding the status of the uniform acts in the various states.

[17] See ANNUAL REPORT OF THE ATTORNEY GENERAL OF THE UNITED STATES (June 30, 1937).

[18] ANNUAL REPORT OF THE ATTORNEY GENERAL OF THE UNITED STATES (June 30, 1932).

during his term as Attorney General, has also provided constructive and vigorous leadership in the improvement of federal criminal administration. This is well illustrated by recommendations contained in his last annual report,[28] for new legislation respecting (1) appeals by the government in criminal cases; (2) public defenders; (3) indeterminate sentences; (4) relief of poor offenders, imprisoned because of inability to pay fines, which he characterizes as "a penalty for poverty rather than punishment for the offense."

One of the most striking developments of the last decade has been the coordination of the work of prison administration by the Bureau of Prisons, located in the Department of Justice of the United States. Those who are interested in penal reform and prison administration can well give consideration to the thoroughly scientific procedures which have been developed in the federal prison system, coordinating, as it has done, the work of probation, parole and penal treatment in preparation for parole. An equally interesting development which has taken place during the same period, but one of much less consequence, because it is concerned only with detection and apprehension rather than with the broader and more significant phases of crime control, is the work of the Federal Bureau of Investigation, which is one of approximately nineteen investigatory agencies which have developed in the federal system. Unlike prosecution and penal treatment, both of which are controlled entirely by the Department of Justice, the Federal Bureau of Investigation—while the best known of all the federal investigatory agencies—is thus only one of several which contribute to the efficacy of the large program of crime control which is carried on by that Department.

Supervision of federal probation has lately been transferred to the Administrative Office of the United States Courts.[29] Closely connected with the work of that office is the Conference of Senior Circuit Judges. This Conference, together with the Judicial Councils of the various circuits, will undoubtedly play an important role for the future in the development of criminal law administration. Thus, for example, in 1939, the Conference of Senior Circuit Judges appointed a committee to consider the advisability of an indeterminate sentence law applicable to federal criminal cases, and to consider, also, whether or not there should be conferred upon the circuit courts of appeals the power to increase or reduce sentences;

[28] ANNUAL REPORT OF THE ATTORNEY GENERAL OF THE UNITED STATES (June 30, 1940).
[29] See Report of the Judicial Conference (January 31, 1940).

a power now exercised by the Court of Criminal Appeals in England.[21] In 1940, after considering the report of its committee and a recommendation of the Attorney General of the United States, the Conference of Senior Circuit Judges adopted a resolution in favor of an indeterminate sentence law,[22] and the Office of the Attorney General was charged with the drafting of a bill to carry out the recommendation. Of course, a number of states have already adopted the procedure of indeterminate sentence in connection with their parole and probation systems.

Another striking development in the federal system has been the cumulative adoption of uniform rules of procedure. For some time we have had uniform federal rules in equity,[23] in admiralty,[24] in bankruptcy,[25] in copyrights[26] and in civil procedure;[27] and efforts are now being made to secure greater uniformity in federal administrative procedures.[28] In 1933, Congress passed an Act which, as amended in 1934,[29] gave to

[21]See Report of the Judicial Conference (September 30, 1939).

[22]See Report of the Judicial Conference (October 9, 1940).

[23]See Act of September 29, 1789, C. 21, §2, 1 STAT. 93; Act of May 8, 1792, C. 36, §2, 1 STAT. 276; Act of May 19, 1828, C. 68, §1, 4 STAT. 278; Act of August 1, 1842, C. 109, 5 STAT. 499; R. S. §913, 28 U. S. C. A. §723.

See also HOLTZOFF, NEW FEDERAL PROCEDURE AND THE COURTS (1940) pp. 2, 4: "In 1822 the Supreme Court adopted the first code of rules of practice for the courts of equity of the United States. They were superseded by a new set of rules in March, 1842.

* * *

"The equity rules adopted by the Supreme Court in 1842 were amended from time to time. They were abrogated and superseded by a new set of rules promulgated in 1912."

[24]See statutes cited in preceding note. See also, HOLTZOFF, *op. cit. supra* note 23 at pp. 3, 4: "The Act of August 23, 1842 (5 STAT. 499), reposed in the Supreme Court plenary power to regulate Federal procedure in actions at common law, admiralty and equity. The Supreme Court promptly adopted a set of admiralty rules.

* * *

"In 1921, the admiralty rules, adopted in 1842, were . . . revised and simplified."

[25]See 30 STAT. 554 (1898), 11 U. S. C. A. §53.

[26]See 35 STAT. 1081 (1909); 37 STAT. 489 (1912), 17 U. S. C. A. §25.

[27]The Supreme Court, on December 20, 1937, adopted and promulgated the new rules of civil procedure, which brought about conformity between law and equity procedures. These new Federal Rules of Civil Procedure became effective September 16, 1938 See 48 STAT. 1064 (1934), 28 U. S. C. A. §723c. See also HOLTZOFF, *op. cit. supra* note 23, at p. 6; Clark and Moore, *A New Federal Civil Procedure*, 44 YALE L. J. 387 (1935).

[28]*Report of the Attorney General's Committee on Administrative Procedure* (1941); Walter Logan Bill, H. R. 6324, 76th Cong. 3d Sess. (vetoed December 18, 1940, and failed in passage over veto December 18, 1940).

[29]48 STAT. 399 (1934), 28 U. S. C. A. §723a.

the Supreme Court of the United States authority to prescribe rules of practice and procedure with respect to proceedings in criminal cases after verdict.[20] In May, 1934, the Supreme Court issued its order effective on or after the 1st day of September, 1934, adopting rules of practice and procedure applicable in all proceedings after plea of guilty, verdict of guilt by a jury, or finding of guilt by the trial court where a jury is waived in criminal cases in the district courts of the United States, and in all subsequent proceedings in such cases in the United States circuit courts of appeals, including the United States Court of Appeals for the District of Columbia and in the Supreme Court of the United States.[21]

The significant remaining gap, so far as uniform rules in the federal courts are concerned, was the area of criminal procedure prior to verdicts and this gap is now in process of being filled. On June 29, 1940, President Roosevelt approved an Act reading as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That the Supreme Court of the United States shall have the power to prescribe, from time to time, rules of pleading, practice, and procedure with respect to any or all proceedings prior to and including verdict, or finding of guilty or not guilty by the court if a jury has been waived, or plea of guilty, in criminal cases in district courts of the United States, including the district courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and the Virgin Islands, in the Supreme Courts of Hawaii and Puerto Rico, in the United States Court for China, and in proceedings before United States commissioners. Such rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session, and thereafter all laws in conflict therewith shall be of no further force and effect.[22]

One of the outstanding achievements of recent years, so far as concerns the administration of justice in the federal system, was the setting up of uniform rules of civil procedure by the Supreme Court covering both law and equity. One of the most encouraging manifestations, as regards legal education, which has occurred since that time, has been the largely attended Institutes throughout the country, held under the auspices of the American Bar Association for the consideration of

[20] 47 STAT. 904 (1933), 28 U. S. C. A. §723a.
[21] 11 U. S. SUP. CT. REP. DIGEST (Court Rules) 559 *et seq.*
[22] 54 STAT. 688 (1940), 28 U. S. C. A. §723a-1.

such rules.[28] One of the finest contributions ever made, by American judges and lawyers, to the administration of justice in the United States was their widespread participation in the preparation of those rules. These facts, together with the foregoing summary of achievements and present trend, are enough to make us definitely optimistic for the future, and hopeful that in the field of criminal law administration, as well as in others, we shall see an increasingly convincing demonstration of democratic government in effective operation.

[28]See FEDERAL RULES OF CIVIL PROCEDURE AND PROCEEDINGS OF THE AMERICAN BAR ASSOCIATION INSTITUTE: Cleveland, Ohio, July 21-23, 1938; Washington, D. C., October 6-8, 1938; New York City, October 17-19, 1938.